IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF MAY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 25311 of 2004

Between:

Anathati Saiduloo, S/o. Veeraiah,
H.No. 3-7-72, Rajivnagar, Suryapet, Nalgonda District.

..... PETITIONER

AND

1 The State of Andhra Pradesh, Rep. by its Principal Secretary,
Revenue, Andhra Pradesh, Secretariat, Hyderabad.
2 The District Collector, Nalgonda District, Nalgonda.
3 The Principal Secretary, Municipal Administration, & Urban Development,
(11), Department, A.P. Secretariat, Hyderabad.
4 The Commissioner, the Municipal Council,
Suryapet Municipality, Suryapet, Nalgonda District.
5 The Mandal Revenue Officer, Suryapet Mandal, Suryapet,
Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to `issue Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring as illegal and void G.O.Ms.No.1044 Revenue (Assn.IV) Department dt. 15-12-2004 and all consequential actions thereto by the respondents and consequently direct the respondents not to disturb the tank bed land by converting it for any other purpose and to pass such other order or orders

Counsel for the Petitioner: MR.S.BHARAT KUMAR

Counsel for the Respondent Nos.1,2,3 & 5: GP FOR REVENUE

Counsel for the Respondent No.4 : P.RADHAKRISHNA (SC for Municipality).

The Court made the following :

O R D E R :

Assignment of Ac.4.00 guntas of land in Sy.No.35 to the Municipal Council, Suryapet, for construction of the Municipal Office Building and for playground at Suryapet town, Nalgonda District, is assailed in this petition.

2. The case of the petitioner is that Pullareddy cheruvu, which is an irrigation tank, situated in the middle of Suryapet town has been serving an ayacut of about 400 acres and that he has Ac.3.20 guntas under the ayacut of that tank and that government, in violation of the provisions of the A.P. Telangana Area Land Revenue Act, 1317 Fasli, and rules made thereunder and the ratio laid down by the Supreme Court in **HINCH LAL TIWARI v. KAMALA DEVI**, alienated Ac.4.00 guntas in that tank for construction of municipal building to Suryapet Municipality, though it has adequate vacant land elsewhere, affecting the interests of himself and the other ayacutdars.

3. Second respondent filed his counter-affidavit on behalf of respondents 1, 2 and 5 alleging that Pullareddy Cheruvu Tank bed is in an extent of about Ac.167.15 in Sy.No.35, and that an extent of Ac.8.00 guntas thereof is not covered by water, and is at a higher level than the full tank level of the tank, and so, Ac.1.20 guntas therein was alienated to Lions Eye Hospital and Acs.2.30 guntas is covered by dwelling houses of weaker sections and the remaining high level land, not covered by water at any time i.e. even at the time of full level, and which is near to the road, was alienated to the municipality for construction of municipal building with a view to prevent illegal encroachment thereon, after following all the formalities.

4. Sketch of Sy.No.35, demarcating the land alienated to the 4th respondent for construction of the municipal office, which is renumbered as Sy.No.35/2, is filed along with the counter affidavit of second respondent. It shows that Sy.No.35/2 is abutting the Hyderabad-Vijayawada main road and is at the northern end of the Sy.No.35, which is in Z shape, abutting Sy.Nos.21 and 22 on the South.

5. Fourth respondent filed his counter-affidavit and additional counter affidavit alleging that assignment in favour of the Municipality was made only after the Executive Engineer, Irrigation and Command Area Development, I.B. Division, Nalgonda, recommended the same with some conditions. He affirmed that he would abide by the conditions imposed by the Executive Engineer, Irrigation and

Command Area Development.

6. The contention of the learned counsel for the petitioner is that since assignment of tank bed in favour of the 4th respondent is against the rules and the decision of the Supreme Court in HINCH LAL's case (1 supra), assignment made in favour of the fourth respondent for construction of the building is liable to be set aside.

7. The contention of the learned Government Pleader and the learned standing counsel for the Municipality is that since the alienated land is adjacent to the Hyderabad-Vijayawada national highway, and since the water spread of the tank is far away from the land assigned, as seen from the sketch enclosed to the counter-affidavit of the second respondent, and since assignment was made only after the Irrigation Department officials inspected the same and reported no objection for the assignment, petitioner, who has no land under the ayacut of the tank, cannot assail the assignment in favour of the fourth respondent.

8. Petitioner did not produce any document to show that he has any agricultural land. So the contention that he is affected by the assignment in favour of the fourth respondent cannot be believed or accepted.

9. The contention of the respondents that an area of about eight acres in Sy.No.35 is at a high level and is adjacent to the main road and was never covered by water, even when the tank was at its full tank level, and so the assignment would not in any way affect any ayacutdars, is not countered by the petitioner by filing a reply affidavit. So, that allegation has to be accepted as true.

10. It is no doubt true that in HINCH LAL's case (1 supra) relied on by the learned counsel for the petitioner the Apex Court held that the material resources of the community like forests, tanks, ponds, hillock, mountain etc., are nature's bounty and have to be protected and that even the ponds falling into disuse, because of their drying up, cannot be allotted to anyone for the purpose of building houses. That decision is of no help to decide this case because it is the specific case of respondents that the area assigned and some other area, whose total extent including the disputed four acres is about 8 acres, though is in Sy.No.35, was never covered by water, even when the tank was at its full tank level. So this is not a case of land surfacing due to disuse or drying up of a tank. Probably that area of eight acres was included in Sy.No.35 with a view to keep it as a reserve for further

expansion of tank, if necessary, when the tank was dug several decades back.

11. As stated earlier, from the sketch enclosed to the counter- affidavit of the 2nd respondent, it is seen that the land alienated to the municipality is just adjacent to the Hyderabad to Vijayawada main road. The fact that eye hospital constructed by the Lions Club and dwelling houses of the weaker sections of the society are in existence near to the assigned land is not denied or disputed.

12. In his letter No.DB/HD1/5212/1, dated 08-08-2002, addressed to the District Collector, Nalgonda, the Executive Engineer Irrigation and Command Area Development, Nalgonda, stated-

> **"The request of Suryapet Municipality may be considered for alienation of 380 ft. x 450 ft. piece of land i.e., about 4 acres in Sy.No.35 Shikkam land of Pulla Reddy cheru Suryapet (V&M) (land marked in the sketch plan) subject to the condition that the tank capacity and ayacut shall not be affected, for which the Municipal administration Suryapet have to agree for excavation of earth in tank bed as directed by the Irrigation Department in between sill level and full tank level i.e., FTL, double the volume of water loss due to occupation of land in question. Approximately the volume of water in the land in question works out to 380 ft. x 450 ft. x 3.28 ft. = 5,60,000 cubic feet or 15,857 M^3. Therefore, the Municipal administration shall agree for excavation of earth double the volume of water i.e., 15,857 x 2 = 31,714 M^3 and the earth shall be dumped in the tank bed beyond MWL as directed by the Irrigation Department if the entire earth is not used in the land in question.**
>
> **Therefore, I request the District Collector to kindly examine the conditions and ask the Municipal administration Suryapet to come forward with an agreement duly accepting the above conditions".**

Fourth respondent in his additional counter-affidavit agreed to abide by the conditions.

13. In the above circumstances, the assignment in favour of the fourth respondent need not be set aside, but the fourth respondent can commence work of building office in the assigned land only after complying with the conditions laid down by the Executive Engineer, Irrigation and Command Area Development, in his above referred and extracted letter, and after filing an affidavit before the Registrar (Judicial) with a certificate issued by the Executive Engineer, Irrigation and Command Area Development, Nalgonda, that the conditions imposed in that letter are complied with, and after the Registrar (Judicial) issues a certificate that such affidavit with Certificate of the Executive Engineer, Irrigation and Command Area

Development, Nalgonda, is filed before him.

14. The Writ Petition is ordered accordingly. No costs.

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C.Y.SOMAYAJULU, J.

Dated 05-05-2005.

SKMR

..... REGISTRAR

To

1 The Principal Secretary, State of Andhra Pradesh,
Revenue, Andhra Pradesh, Secretariat, Hyderabad.
2 The District Collector, Nalgonda District, Nalgonda.
3 The Principal Secretary, Municipal Administration, & Urban Development,
(11), Department, A.P. Secretariat, Hyderabad.
4 The Commissioner, the Municipal Council,
Suryapet Municipality, Suryapet, Nalgonda District.
5 The Mandal Revenue Officer, Suryapet Mandal, Suryapet,
Nalgonda District.

6 2 CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

7 The Hon'ble the Registrar (Judicial), High Court of A.P., Hyderabad.

8 2 CD copies